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Rule 49. Verdicts And Interrogatories.

(a) General Verdicts and General Verdicts with Interrogatories. The court may require a jury to return only a general verdict which pronounces generally upon all the issues, or the court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(b) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(c) Allocation of Fault. (1) In an action for personal injury, medical injury, wrongful death, or property damage, the jury shall determine the fault of all persons or entities, including those not made parties, who may have joint liability or several liability for the alleged injury, death, or damage to property. However, the jury shall determine the fault of a nonparty only if:

(A) the claimant entered into a settlement agreement with the nonparty, or a defending party has given notice, as provided in Rule 9(h), that the nonparty was wholly or partially at fault; and

(B) the defending party has carried the burden of establishing a prima facie case of the

nonparty's fault.

(2) The jury shall allocate the fault, on a percentage basis, among those persons or entities, including those not made parties, found to have contributed to the injury, death, or property damage.

(3) Assessment of the percentage of a nonparty's fault shall be used only for determining the percentage of the parties. A finding of fault shall not subject a nonparty to liability in any action or be introduced as evidence of liability in any action.

Comment Text:

Reporter's Notes to Rule 49: - 1. Rule 49 is substantially the same as FRCP 49 and to prior Arkansas law as embodied in superseded Ark. Stat. Ann. § 27-1741.1, et seq. (Repl. 1962). Implicit in the Federal Rule is the right of the trial court to use a general verdict; however, it is believed that less confusion and uncertainty will result if the use of general verdicts is expressly permitted in this rule. Hence, superseded Ark. Stat. Ann. § 27-1741.1 (Repl. 1962), is retained in principle in this rule. 2. Section (b) does not specifically consider the possibility of inconsistent answers to interrogatories submitted to the jury; however, the courts do have the power and authority to rectify inconsistent answers, particularly where the inconsistency is due in part to incorrect instructions to the jury. *Stephenson v. College Misericordia*, 376 F. Supp. 1324 (D. C. Pa., 1974). The court can ask the jury to reconsider its verdict in an attempt to remove the inconsistency, *Alston v. West*, 340 F. 2d 856 (C.C.A. 7th, 1965), or order a new trial. *Wright v. Kroeger Corp.*, 422 F. 2d 176 (C.C.A. 5th, 1970). 3. Overall, Rule 49 should have little effect on prior Arkansas practice and procedure as it is essentially the same as the prior law. Addition to Reporter's Notes, 1983 Amendment: - Rule 49(a) is amended by adding all of the words after the first comma in the first sentence and by adding the remaining sentences. The effect is to add to the Rule provisions for a general verdict accompanied by answers to jury interrogatories.

Addition to Reporter's Notes (2014 Amendment): Subdivision (c) implements Ark. Code Ann. §§ 16-61-201 & 16-61-202(c), as amended by Act 1116 of 2013. It is based in part on section 2 of Act 649 of 2003, codified at Ark. Code Ann. § 16-55-202(a), which was invalidated in separation-of-powers grounds in *Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135. A corresponding change has been made to Rule 52(a), which applies in bench trials. Rule 9(h), cross-referenced paragraph (1)(A), is the sole procedural mechanism for asserting the right to an allocation of nonparty fault created by Ark. Code Ann. § 16-61-202(c).

Paragraph (1) of subdivision (c) provides that, if certain conditions are met, the jury must determine "the fault of *all persons and entities*, including those not made parties, *who may have joint liability or several liability*" for the alleged harm. The italicized language is taken from Ark. Code Ann. § 16-61-201 and is intended to be coextensive with the statute. In tracking the statutory language, the rule is neutral on questions as to its scope, e.g., whether the phrase "may have joint liability or several liability" includes persons or entities who are immune from suit or are beyond the court's jurisdiction.

As states in paragraph (1)(A), the fault of a nonparty will be determined only if the claimant has settled with the nonparty or the defending party has given the notice required by Rule 9(h). Paragraph (1)(B) imposes another condition: "the defending party has carried the burden of establishing a prima facie case of the nonparty's fault." In other words, the defending party

must produce sufficient evidence to warrant submission of the case to the jury. *Health Facilities Mgmt. Corp. v. Hughes*, 365 Ark. 237, 244--45, 227 S.W.3d 910, 917 (2006). Placing this burden on the defending party is consistent with Act 649. See Ark. Code Ann. § 16-55-215 (Act 649 does not affect "existing law that provides that the burden of alleging and proving fault is upon the person who seeks to establish fault.").

Paragraph (2) is based on language in former section 16-55-202(a), and paragraph (3) is taken from former section 16-55-202(c)(2) & (3).

History Text:

History. Amended May 16, 1983; amended November 8, 1993, effective January 1, 1994; amended August 7, 2014, effective January 1, 2015.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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